

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
CELTRONIX TELEMETRY, INC.)	FCC File No. 0000306557
)	
For Special Temporary Authority to Operate 218-)	
219 MHz Service Network in the Norfolk-)	
Virginia Beach Metropolitan Statistical Area)	
)	

ORDER

Adopted: April 23, 2002

Released: April 25, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On November 5, 2001, Celtronix Telemetry, Inc. (Celtronix) filed an application for review requesting a reversal of an *Order on Reconsideration*¹ (*Order*) released on September 19, 2001 by the Wireless Telecommunications Bureau's Public Safety and Private Wireless Division (Division). For the reasons set forth herein, we dismiss Celtronix's application for review as untimely.

2. *Background.* On January 18, 1995, Celtronix received an authorization to operate Station KIVD0054, a 218-219 MHz Service system in the Norfolk-Virginia Beach Metropolitan Statistical Area. In 1996, Celtronix demonstrated and then constructed a vehicle tracking system.² Celtronix used Station KIVD0054 to offer a low-cost vehicle tracking service.³

3. In 1999, the Commission adopted an installment payment restructuring plan for the 218-219 MHz Service.⁴ Under the terms of the restructuring plan, an eligible licensee could: (1) elect to retain its license (either by resuming the installment payments it agreed to at the time it obtained its license (reamortization and resumption) or by paying off the existing balance due on the license (prepayment)); or (2) choose "amnesty," under which the eligible licensee returns the license to the Commission in exchange for debt forgiveness and a refund of certain payments.⁵ Pursuant to this restructuring plan,

¹ Celtronix Telemetry, Inc., *Order on Reconsideration*, 16 FCC Rcd 16614 (WTB PSPWD 2001) (*September 19 Order on Reconsideration*).

² Celtronix Telemetry, Inc., Petition for Reconsideration (filed Mar. 2, 2001) (Petition) at 2.

³ *Id.* at 4.

⁴ Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, WT Docket 98-169, 15 FCC Rcd 1497 (1999).

⁵ *Id.*

Celtronix was deemed to be an eligible licensee⁶ and elected the amnesty option.⁷ As a consequence of its amnesty election, Celtronix was required to cease operation by February 1, 2001. On December 26, 2000, Celtronix requested a Special Temporary Authorization (STA) effective February 1, 2001, and lasting for 180 days, “to permit continued operation of its 218-219 MHz Service system” in the Norfolk-Virginia Beach MSA.⁸ On January 31, 2001, the Division granted a limited, sixty-day STA.⁹

4. On March 2, 2001, Celtronix filed a petition requesting reconsideration of the grant of a sixty-day STA and requested an extension of the STA with conditions or, alternatively, conversion of the STA to interim developmental authority with the same conditions.¹⁰ The Division extended the STA for an additional thirty days pending resolution of Celtronix’s Petition.¹¹ On April 12, 2001, Celtronix filed a supplement to its Petition in which it stated that it should be granted either (1) an extension of the STA; (2) interim operating authority; (3) secondary authority pursuant to Part 90 of the Commission’s Rules; or (4) developmental authority.¹² On September 19, 2001, the Division denied Celtronix’s request for an extension of the STA, interim operating authority and developmental authority.¹³ The Division chose not to address Celtronix’s arguments for secondary authority in the September 19, 2001 *Order*¹⁴ because the issue was addressed in a separate *Order on Reconsideration*.¹⁵ In the *August 31 Order on Reconsideration*, the Division concluded that Celtronix had demonstrated that it was eligible to operate its system in the 218-219 MHz Band on a secondary basis pursuant to Part 90 of the Commission’s Rules.¹⁶

⁶ Celtronix was listed as an eligible licensee in Wireless Telecommunications Bureau Announces Revised Election Date (January 31, 2001) and Amended Eligibility List for 218-219 MHz Service, *Public Notice*, DA 01-9 (WTB rel. Jan. 3, 2001).

⁷ See Celtronix Telemetry, Inc., Election Notice Submission (filed Jan. 31, 2001); see also Wireless Telecommunications Bureau Announces the Election for the 218-219 MHz Service, *Public Notice*, DA 01-583 (Mar. 5, 2001).

⁸ Celtronix STA Request, filed Dec. 26, 2000 at 1.

⁹ Letter from D’wana Terry, Chief, Public Safety and Private Wireless Division to Richard S. Myers, President, Celtronix Telemetry, Inc. at 2 (dated Jan. 31, 2001).

¹⁰ Petition at 1. Celtronix provides four conditions: (1) customers will be notified that service is being provided on a temporary, limited basis and will cease in accordance with the issuance of a permanent license; (2) the numbers of tracking devices in operation will be limited to 205; (3) Celtronix, at the Commission’s instruction, will submit a full report of its operations that can be made available for public inspection; and (4) Celtronix will be prepared to cease operations upon the new, permanent licensing of the 218-219 MHz spectrum. *Id.* at 8.

¹¹ See Letter from Ramona Melson, Deputy Chief, Public Safety and Private Wireless Division to Richard S. Myers, President, Celtronix Telemetry, Inc. (dated Apr. 17, 2001).

¹² See Celtronix Telemetry, Inc., Supplement to Petition for Reconsideration (filed Apr. 12, 2001).

¹³ See *September 19 Order on Reconsideration*, 16 FCC Rcd at 16621 ¶ 21.

¹⁴ *Id.* at 16620 ¶ 19.

¹⁵ See Celtronix Telemetry, Inc., *Order on Reconsideration*, 16 FCC Rcd 15907 (WTB PSPWD 2001) (*August 31 Order on Reconsideration*).

¹⁶ *Id.* at 15910 ¶ 8. See also 47 C.F.R. § 90.259.

Accordingly, the Division forwarded Celtronix's application requesting authority to operate in the 218-219 MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules to the Division's Licensing and Technical Analysis Branch (Branch) for processing.¹⁷ On November 5, 2001, while Celtronix's Part 90 application was still pending, Celtronix filed the subject application for review. On March 19, 2002, the Branch granted Celtronix's Part 90 application.¹⁸

5. *Discussion.* We find that Celtronix's application for review was late filed and should be dismissed. Section 5(c)(4) of the Communications Act, as amended, permits any person aggrieved by any action of delegated authority to file an application for review within the time and in such manner as the Commission may prescribe.¹⁹ Section 1.115(d) of the Commission's Rules provides that an application for review must be filed within thirty days of public notice of such action, as that date is defined by Section 1.4(b) of the Commission's Rules.²⁰ In the instant case, the release of the Division's *September 19 Order on Reconsideration* constituted public notice of the Commission's action. Because the thirty-day period for filing an application for review began on September 19, 2001, Celtronix was required to file its application for review no later than October 22, 2001.²¹ Celtronix did not file the instant application for review until November 5, 2001.²²

6. Section 0.331(c) of the Commission's Rules provides that, under authority delegated by the Commission, the Bureau "may dismiss any such application [for review] that does not comply with the filing requirements" of Section 1.115(d) or (f) of the Commission's Rules.²³ Without a waiver, the subject application for review is untimely and, thus, does not comply with Section 1.115(d) of the

¹⁷ FCC File No. D128959 (Part 90 application).

¹⁸ *Id.*

¹⁹ See 47 U.S.C. § 155(c)(4).

²⁰ See 47 C.F.R. § 1.115(d). 47 C.F.R. § 1.4(b) provides in pertinent part: "(b) General Rule – Computation of Beginning Date When Action is Initiated by Comparison or Staff. Unless otherwise provided, the first day to be counted when a period of time begins with an action taken by the Commission, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority is the day after the day on which public notice of that action is given."

²¹ On October 17, 2001, the FCC released a *Public Notice* which provided that the due date for any filings due at the Commission on October 18 and October 19, 2001 had been extended to October 22, 2001. See FCC Announces Change in the Filing Location for Paper Documents, *Public Notice*, DA 01-2436 (rel. Oct. 17, 2001) (*October 17 Public Notice*). The thirty-day filing period for Celtronix ended on October 19, 2001. Therefore, pursuant to the *October 17 Public Notice*, the due date for Celtronix's application for review was extended until October 22, 2001.

²² The Application for Review was dated October 19, 2001 by Celtronix and was properly addressed but, for reasons not in the record, the courier did not deliver the item to the FCC until November 5, 2001. Even if we determined that the courier, and not Celtronix, was responsible for the untimely delivery of the item, we still must dismiss the item as untimely. Failure of the courier service to deliver the item does not constitute good cause for missing a filing deadline. See *Time Warner Entertainment/Advance-Newhouse Partnership, et al v. Florida Power & Light Company, Order on Reconsideration*, 14 FCC Rcd 18899, 18901 ¶ 5 (1999).

²³ 47 C.F.R. § 0.331. See *City of Commerce, Order on Reconsideration*, 16 FCC Rcd 14461, 14464 ¶ 7 (WTB PSPWD 2001).

Commission's Rules. The Commission has previously ruled that enforcement of the procedural rules, including periods for filing applications for review, is necessary in order to manage the decision-making process in an efficient manner.²⁴ The Commission's policy was guided by court decisions affirming that enforcement of its procedural rules promotes orderliness and finality in the administrative process and thereby contributes towards the public interest, convenience and necessity.²⁵ Therefore, we conclude that Celtronix's application for review is untimely and, in the absence of a waiver, must be dismissed.

7. Moreover, we believe that the application for review is moot. In its reconsideration petition, Celtronix argued that it should be granted "some form of limited authority" in order to continue operations.²⁶ Celtronix presented four alternatives for the Division's consideration: (1) special temporary authority; (2) interim operating authority; (3) secondary authority; or (4) developmental authority.²⁷ In light of new information and the arguments presented by Celtronix, the Division concluded in the *August 31 Order on Reconsideration* that Celtronix was eligible to operate in the 218-219 MHz band on a secondary basis pursuant to Part 90 of the Commission's Rules.²⁸ As stated above, the Branch granted Celtronix's Part 90 application on March 19, 2002. Therefore, Celtronix is able to continue its operation, as it requested, on a secondary basis. Accordingly, we conclude that Celtronix has obtained the requested relief, namely, authority to provide service in the 218-219 MHz band.

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 309 and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309 and 405 and Section 1.115(d) of the Commission's Rules, 47 C.F.R. § 1.115(d), the application for review filed by Celtronix Telemetry, Inc. on November 5, 2001 IS DISMISSED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁴ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Memorandum Opinion and Order*, 15 FCC Rcd 10565, 10566 ¶ 3 (2000).

²⁵ *Id.* citing *WSTE-TV, Inc. v. FCC*, 566 F.2d 333, 337 (D.C. Cir. 1977) *Civic Telecasting Corporation v. FCC*, 523 F.2d 1185, 1188 (D.C. Cir. 1975), *cert. denied*, 426 U.S. 949 (1976); *Spanish International Broadcasting Co. v. FCC*, 385 F.2d 615, 622 (D.C. Cir. 1967); *Valley Telecasting Co. v. FCC*, 336 F.2d 914, 917 (D.C. Cir. 1964).

²⁶ Petition at 1-2.

²⁷ *Id.* at 2.

²⁸ See *August 31 Order on Reconsideration*, 16 FCC Rcd at 15910 ¶ 9.